

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5295 OF 2005**

The Managing Director,
Shri Datta Shetkari Sahakari
Sakhar Karkhana Ltd. Petitioners
Vs.
Madanlal Patwa Respondent

AND

WRIT PETITION NO.5296 OF 2005

The Managing Director,
Shri Datta Shetkari Sahakari
Sakhar Karkhana Ltd. Petitioners
Vs.
Shri Vikramsinh Respondent

WITH

WRIT PETITION NO.5944 OF 2005

The Managing Director,
Shri Datta Shetkari Sahakari
Sakhar Karkhana Ltd. Petitioners
Vs.
Shri Sheshnath Singh Respondent

Sarvasri Kiran Bapat with V.B. Rajure for
the Petitioners in all the three Petitions.

None present for the Respondent in all the
three Petitions.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 07, 2006

P.C:

1. Since common questions of law and facts arise in all these three petitions, they were heard together and are being disposed of by this common order.

2. The petitioners challenge the order passed by the Labour Court and confirmed by the Industrial Court whereby the orders of termination of the services of the respondents have been set aside while holding that the petitioners, on account of the said orders, had engaged in unfair labour practice under Item-1, Clauses (a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act" and they were directed to desist from the same and further to reinstate the respondents in the service with continuity of service and 60% back wages, besides cost of Rs.500/-, except the wages during the period from 1-12-1992 to 31-12-1996. The challenge is on two counts: firstly, as regards the order directing reinstatement and in relation to the back wages.

3. As regards the order of reinstatement, it is sought to be contended that the petitioners have established the misconduct on the part of the respondents in the course of the trial before the Labour Court, and therefore mere failure on the part of the petitioners in holding an inquiry prior to issuance of the order of

termination could not have been sufficient cause for setting aside the orders of termination. The contention is devoid of substance. It is well-settled that once the employee is confirmed in the services on completion of the period of probation, in case of any misconduct as well as on account of unsatisfactory services or loss of confidence in the employee, his services can be terminated only after following the procedure prescribed by law and after adhering to the principles of natural justice. The services of such an employee cannot be terminated without the service of chargesheet and holding of an inquiry in relation to the charges against the employee. In the case in hand, it is not in dispute that the services of the respondents were confirmed on completion of their probation period. It is also not in dispute that they were neither chargesheeted with any charge nor any inquiry was held before issuing the orders of termination. Clearly there are concurrent findings on this aspect and the learned Advocate for the petitioners has also fairly conceded that the services of the respondents were confirmed on completion of the probation period. Being so, merely because an attempt was made during the hearing of the matter before the Court below to establish the alleged misconduct on the part of the respondents, that could not be a justification for not following the procedure known to law before imposing the penalty of termination of

services on the respondents. Besides, the allegation regarding the loss of confidence appears to be merely because that the respondents were indulged in Union activities. Whether and to what extent such activities could be said to be a misconduct and whether same could be sufficient for loss of confidence are the facts to be established in a proper inquiry after service of necessary chargesheet, which procedure, admittedly, has not been followed by the petitioners. Being so, no fault can be found with the impugned order and the concurrent findings arrived therein which clearly justify the order directing reinstatement of the respondents in the services.

4. Grievance was also made that the Labour Court could not have directed reinstatement in the Sugar Department as the respondents were employed in the Paper Department when their services were terminated and consequent to closure of the Paper Department, options were given to the employees employed in the Paper Department and those who had opted for employment in the Sugar Department, they were accordingly employed but no such option was given to the respondents. Clear findings arrived at by the Courts below disclose that the Paper Department was shut down in December, 1992, much after the orders of termination issued by the petitioners. The option which was obtained from the employees in the Paper Department

was in the year 1996. Factually the respondents were not in the employment on account of the orders of termination which were under challenge. Being so, they had no opportunity to give the option but at the same time it is a matter of record that the request for retrenchment of the employees from the Paper Department was rejected and consequently those employees were absorbed in the Sugar Department. There cannot be any other criteria adopted in relation to the respondents who were ultimately found to have been denied the opportunity of employment illegally and their services were illegally terminated. Consequently, the order directing reinstatement of the respondents in the Sugar Department also cannot be found fault with.

5. As regards the challenge to the back wages, the Labour Court has directed the payment of 60% of the back wages excluding the period from 1-12-1992 till 31-12-1996. It is true that the petitioners sought to file an affidavit of one Namdeo Narayan Shinde as Exhibit C-78 before the Labour Court contending that the respondents were gainfully employed elsewhere. It is true that the affidavit discloses the names of the firms where the respondents were stated to have been employed. However, undisputedly, the said deponent was not produced for the purpose of cross-examination on behalf of the respondents. Besides, the affidavit on the face

of it discloses that the information regarding the gainful employment of the respondents was based on some information received by the deponent, without disclosing the source of information. No details regarding such gainful employment appears to have been disclosed in the affidavit. No fault can be found with the orders of the Labour Court and the Industrial Court refusing to give any credence to such affidavit as neither the deponent was subjected to cross-examination nor the information disclosed in the affidavit can be said to be credit-worthy. Besides, the Court below after deducting the period during which the respondents could not claim the back wages has restricted the payment of back wages to 60% and has not awarded full back wages. Considering this aspect, I do not find any justification for interference therein in exercise of writ jurisdiction under Article 227 of the Constitution of India.

6. Since the impugned orders do not disclose any jurisdictional error and there being no case made out for interference therein in writ jurisdiction, the petitions fail and are rejected.

(R.M.S. Khandeparkar, J.)